

DRAFT of Proposed Regulations
Working Version with Historical Notes
CHAPTER 57. EXEMPTION FROM REGISTRATION
AND REPORTING

Key to Lobbying Disclosure Regulations

Original text – former regulations at 51 Pa. Code § 31.1 *et seq.* promulgated under Act 1998-93.

Track changes (working copy) – recommend changes to the former regulations that are now required by Act 2006-134. Deletions are shown as strikeouts, and additions are underlined.

Footnotes – explain the reasons for the track changes in the working copy and will be used for the Preamble placed in the *Pennsylvania Bulletin*, which contains the explanation and justification for the regulations. For purposes of clarity in this document only, Act 134 is referenced as Act 2006-134, and Act 93 is referenced as Act 1998-93.

Highlighting – denotes major issues in the text and footnotes for the Committee's consideration.

Sec.

57.1. General rule.

57.2. Qualifications for exemption.

§ 57.1. General rule.

(a) Unless specified in section 57.2, a person, principal, lobbying firm or lobbyist that qualifies for any exemption under section 57.2 will not be required to register or report with respect to any activity covered by the exemption.¹ However, if an individual does not qualify for an exemption in 57.2(a), then the activity described in the exemption shall be included within the reports otherwise required by the Act.

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(b) Upon losing exempt status, a person, principal, lobbying firm or lobbyist is immediately subject to the registration and reporting requirements of the act.

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(c) Upon losing exempt status, a principal is not required to retroactively file reports for

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¹ The lobbying community raised the issue of the interrelation of the various exemption thresholds. On February 21, 2007, the Committee asked the Department to make this change, essentially maintaining the previous regulation.

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previous quarterly reporting periods in which the exemption applied.²

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(d) Upon losing exempt status, a lobbying firm or lobbyist is not required to retroactively sign or file reports for previous quarterly reporting periods in which the exemption applied.³

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§ 57.2. Qualifications for exemption.

(a) The following persons and activities shall be exempt from registration under section 1304-A of the act (relating to registration) and reporting under section 1305-A of the act (relating to reporting):

(1) The exemption at section 1306-A (1) of the act is limited to an individual or entity whose only lobbying activities consist of preparing testimony and testifying before a committee of the General Assembly or participating in an agency administrative proceeding. Participating in an administrative proceeding shall include, but not be limited to, preparing comments on regulations⁴ and preparing and delivering comments at agency advisory committee meetings.⁵

To the extent an individual or entity, which is otherwise required to register and report under the act, engages in the aforesaid activities, such activities are not exempt and shall be included in the reports required by the act.

(2) The exemption at section 1306-A (2) of the act is limited to an individual or entity which is engaged in the business of publishing or broadcasting, regardless of the medium used, while engaged in the gathering and dissemination of news and comment on the news, to the general public in the ordinary course of business. The term individual in this subsection includes employees and independent contractors.

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To qualify for this exemption, the individual or entity must satisfy all of the following criteria:

- (i) Regularly report or comment on government news or current events;
- (ii) Receive compensation or revenue for the publications or broadcasts;

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² On February 21, 2007, the Committee asked the Department to make these changes.

³ Id.

⁴ Because preparing comments on regulations is similar to preparing testimony, as exempted at section 1306-A(1) of Act 2006-134, the Committee may wish to consider including it as exempted activity. On February 2, 2007, an attendee at the seminar of the Pennsylvania Bar Institute (PBI) in Philadelphia raised this question.

⁵ On February 21, 2007, the Committee asked the Department to make this change to a public comment it had received previously.

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- (iii) Make such publications or broadcasts available to the general public, regardless of any fee requirements;
- (iv) Be independent of any principal, lobbying firm or lobbyist that is engaged in lobbying activities under the act; and
- (v) Be independent of any organization or entity that is not a news organization.

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To the extent an individual or entity, which is otherwise required to register and report under the act, engages in activities other than the publishing or broadcasting of news or comment on the news, such other activities shall not be afforded an exemption under this subsection.⁷

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(3) The exemption at section 1306-A (3) of the act is limited to an individual who does not receive any economic consideration for lobbying.

(4) The exemption at section 1306-A (4) of the act is limited to an individual whose economic consideration for lobbying, from all principals represented, does not exceed \$2,500 in the aggregate during any reporting period.

(5) The exemption at section 1306-A (5) of the act is limited to an individual who engages in lobbying on behalf of the individual's employer if the lobbying activity represents less than 20 hours during any reporting period.⁸

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(6) The exemption at section 1306-A (6) of the act is limited to a principal whose total expenses for lobbying purposes do not exceed \$2,500 during any reporting period.

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(7) The exemptions at section 1306-A (7), (8), (9) and (10) of the act (as referenced in section 1305-A (b)(8)) exclude Commonwealth governmental entities⁹ and political subdivisions as well as elected officials, appointed officials and employees of said entities or subdivisions from the registration and reporting requirements of the act to the extent that the lobbying activities are performed by the governmental entities or by their officials or employees in an official capacity. Specifically, these sections exempt lobbying by a governmental entity on its own behalf and lobbying by an official or employee of such entity acting in an official capacity such that neither the official or employee nor the governmental entity would be required to register or report as to such activities under the act. If other lobbyists or lobbying firms engage in lobbying on

⁷ This section was discussed extensively by the subcommittee. A significant concern is that the mere maintenance of a website or publishing of an electronically transmitted newsletter by entities that do or should otherwise register and report not result in a blanket exemption of otherwise covered activities.

⁸ Section 1306-A(5) of Act 2006-134 changed this provision from section 1306(3)(iii) of Act 1998-93.

⁹ The Subcommittee recommends the addition of a definition of "entity" in Chapter 51. Recommended language is "an organization that has a legal identity, which is separate and distinct from its members and includes, but is not limited to, a governmental entity."

behalf of the governmental entity, then the governmental entity would be required to register and report as a principal with respect to those non-exempt lobbying activities assuming the total expenditures for the non-exempt lobbying activities would not bring it under the exemption at section 1306-A (6) of the act.¹⁰

(8) The exemption at section 1306-A (11) of the act is limited to an individual representing a bona fide church or bona fide religious body of which the individual is a member, or such bona fide church or bona fide religious body itself, where the lobbying is solely for the purpose of protecting the constitutional right to the free exercise of religion. Lobbying on issues beyond the scope of the free exercise of religion does not qualify for this exemption no matter who engages in the lobbying.

(9) The exemption at section 1306-A (12) of the act applies to an individual who is not otherwise required to register and who serves on an advisory board, working group or task force at the request of an agency or the General Assembly. This exemption is limited to the scope of the individual's service on the advisory board, working group or task force.

(10) The exemption at section 1306-A (13) of the act applies to the activity of participating as a party or as an attorney at law or representative of a party, case or controversy in any administrative adjudication pursuant to 2 Pa.C.S. (relating to administrative law and procedure). This activity is exempt whether performed by an individual or entity, but shall not operate to exclude from reporting other activities performed by individuals or entities that are otherwise required to register and report under the act.

(11) The exemption at section 1306-A (14) of the act applies to expenditures and other transactions subject to reporting under Article XVI of the act of June 3, 1937 (P.L. 1333, No. 320), known as the Pennsylvania Election Code.¹¹

(b) Vendor activities. The exemption at section 1306-A (15) of the act applies to vendor activities under 62 Pa.C.S. §§ 514 (relating to small procurements), 516 (relating to emergency procurements) and efforts directly related to responding to publicly advertised invitations to bid and requests for proposals. This exemption also includes the following vendor activities in response to procurement actions initiated by the Commonwealth¹²:

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- (1) Submission of supplier pricing requests¹³ and sealed quotes, bids, and proposals in response to a public Request for Quotes (RFQ), Invitation For Bids (IFB) or Request for Proposals (RFP) procurement process;¹⁴

10 After the Committee's on-going discussion of "constituent services" a sentence was added that included "services to a constituent or other member of the public based upon a referral or recommendation by a legislator or other State official or employee within the scope of the State official's office or employment." The Subcommittee suggests that this clarification may be more appropriately placed in the definition of lobbying found in Chapter 51.

11 This sentence has been removed by staff to be consistent with the discussions of the Committee on the Interim Guidelines.

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Deleted: Although the Subcommittee believes that the Committee can require a principal to provide notice to State officials and employees for campaign-related gifts, it does not appear that the act would also require that those gifts be reported in a principal's quarterly reports.

12 This clause is added to clarify that these vendor activities are exempt only when in response to a Commonwealth (procurement) request, not when unsolicited or initiated by the vendor.

13 Supplier pricing requests was added to include as a lobbying exception a vendor response to a request

- (2) Submission of questions, participation in a site visit, pre-bid or pre-proposal conference, and communications concerning the procurement process between the vendor's and the covered agency's contracting officer designated by the public competitive procurement document (RFQ, IFB or RFP) during an active procurement¹⁵;
- (3) Submission of a response to a public Request for Expressions of Interest (RFEI) or Request For Information (RFI) seeking formal expression of interest or identification of vendor capabilities for a potential future procurement;
- (4) Demonstration of products or services authorized by an existing contract to covered agencies that may order from the contract;
- (5) Participation in trade shows, conventions or product demonstrations open to the public or held for an open community where Commonwealth representatives are among the attendees; and
- (6) Participation in an open, public forum for vendors conducted by the Commonwealth.¹⁶

for quote for a sole-source or emergency purchase.

14 Subsections (ii) through (viii) are excerpted from the Notice of Application of Executive Order 1980-18 Revision No. 4 to Vendors, as published by the Department of General Services.

15 Site visit was added as it is part of many procurements; the last clause was inserted to clarify that these activities are only exempt when they occur during an active procurement; accordingly, pre- or post-procurement communications would not be exempt and coupled with the earlier clause ("between the vendor's and the covered agency's contracting officer designated by the public competitive procurement document") make it clear that communications outside of the prescribed channels by a vendor (and all such communications by a lobbyist) would not be exempt.

16 This exemption combines the two earlier submitted provisions and clarifies the concept that non-procurement discussions with vendors would be exempt only if they are conducted in an open and public forum. DGS believes these latest revisions incorporate and address the Committee's comments and concerns in a simple and efficient manner. As it recognized and discussed, the Committee will still need to consider how to tie these vendor activities (and the other exemptions) to the 1305-B(7) reporting requirements.